Supreme Court Expands Scope of 'Public Works' Definition — Contract Employees Performing Operations Work are Covered by Prevailing Wage Laws

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Key Points

- Historic definition of "public works" expanded beyond construction-related activities
- Supreme Court holds that some special districts must pay prevailing wages to workers performing non-infrastructure related tasks
- Full extent of coverage of prevailing wages for operational contract workers is unclear

Labor Code Section 1720(a)(1) defines a "public work" as "construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds . . . ." Historically, this definition has been read into Section 1720 (a)(2)'s additional definition of "work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type." No longer. The Supreme Court held today that contract employees sorting bottles at a materials recovery facility owned by a county sanitation district were entitled to be paid prevailing wages pursuant to the California Labor Code. The Court in Kaanaana v. Barrett Business Systems affirmed a Court of Appeal decision that such work was "public work" for which prevailing wages must be paid. The Court held that the definition in Section 1720(a)(2) as applied to specified types of special districts should be read independently of Section 1720(a)(1)'s traditional limitation to infrastructure-related work.

While the work in Kaanaana involved sorting bottles, the reasoning of the opinion opens the door for assertions that any work done under contract (and not performed by agency employees) for irrigation, utility, reclamation and improvement districts, and other districts of this type, except for public works projects of $1,000 or less, and operation of the irrigation or drainage system of any irrigation or reclamation district, a "public work" subject to prevailing wage requirements.

The state Labor Commissioner does not at this time prescribe prevailing wage rates for operational workers like Kaanaana, but prescribes such wages for construction and maintenance-related craft workers. Presumably, the Labor Commissioner will now need to make such a wage determination applicable to, at the
least, sorters of recyclable materials. It remains to be seen whether other types of contract work, like accounting or legal work, could be included within prevailing wage requirements. The dissenting opinion called on the legislature to amend the Labor Code to restore the definitional status quo, but it is unknown whether or when the legislature will respond.

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